IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/04/2004

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THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.10796 of 2001
and
WMP No.15621 of 2001

The Union of India
rep. by its Chief Commissioner
of Income Tax,
121, M-G. Road
Nungambakkam, Chennai 34. .. Petitioner

-Vs-

1. The Central Administrative
Tribunal Madras Bench
rep. by its Registrar,
High Court Buildings, Chennai.
2. Mrs.Mazharunissa .. Respondents

This writ petition is filed under Article 226 of The Constitution of India to issue a writ of Certiorari calling for the records of the 1 st respondent relating to its proceedings in O.A.1056/99 dated 4.1.20 01 and quash the same.

For Petitioner : Mr.M.Veluswami

For Respondents : Mr.P.V.S.Giridhar for R2

:ORDER

(Order of the Court was made by V.S.SIRPURKAR, J.)
Union of India comes up by way of this writ petition, challenging the order passed by the Central Administrative Tribunal (CAT hereinafter for short), whereby the Tribunal has practically awarded the promotion to the second respondent with effect from 1-12-1994. The direction is in the following words:-
"In the light of our findings we hold that there are no adverse remarks in the ACR of the applicant and the respondent is directed to consider the case of the applicant from the time when the applicant was due for promotion i.e. from 1.12.1994. This exercise shall be completed within three months from the date of receipt of a copy of this order."

A short factual background will not be out of place.
2. The second respondent started her service as UDC on 11.12.1975 and was promoted as an Assistant in July, 1997. However, before that, the second respondent suffered two adverse remarks, the first being in the year 1990-91 and the second being in the year 1991-92. The communication, which communicates the adverse remarks for the year 1991-92, suggests that though she was graded as good, the following comments were made:
"Punctuality inadequate - She is a habitual latecomer."
This communication is dated 1.6.1992. The previous communication is dated 10.10.1991, wherein also it has been mentioned that she was in the habit of going on leave very frequently and also attending the office late on all days. The second respondent did not do anything on this and kept quiet. She was not promoted in the year 1994, when she should have been ordinarily promoted in the absence of any bad records. Ultimately, it turns out that she was promoted as an Assistant in July, 1997. It is then, that she made the representation to the authorities for expunging the remarks of two years. On rejection, she approached the Tribunal by way of O.A.Nos.302 and 303 of 1999. She wanted the communication dated 28.12.1998 to be quashed, by which her request with regard to the expunging of the comments was rejected by the Chief Commissioner of Income-Tax. Be that as it may, the Tribunal entertained the applications and also noted the fact that at the time of hearing i.e. in the year 1999, she was already promoted in 1997 itself. The Tribunal then, at the admission stage itself, observed that the applicant should make a representation to the concerned Officers in the Department to consider her promotion, and the respondent could consider her representation and take proper decision regarding her promotion. It also observed that she could approach the Tribunal after seeking the legal advice. As per the direction given by the Tribunal, again the representations were considered and rejected, whereupon she approached the Tribunal for the second time by way of O.A.No.1056/99. In this O.A. besides the other things, the second respondent also claimed a direction for her being promoted with effect from 19 94. As has already been stated earlier, the Tribunal has allowed this application and issued a direction quoted above. Hence, the writ petition.
3. Mr.Veluswami, the learned Counsel for the Union of India, urges that firstly the Tribunal could not have directed the promotion to be made from 1.12.1994, because that was the task of the Departmental Promotion Committee. He then, pointed out that the Tribunal has completely misunderstood its earlier order, whereby the claim of the second respondent for quashing of the adverse confidential remarks was not entertained. He points out that there was nothing in that order to suggest that the Tribunal even distantly meant that the remarks were uncalled for or were to be wiped out. All that the Tribunal had done in its earlier order was to direct the second respondent to make a fresh representation, particularly because it was pointed out by the second respondent that she was rated as a good Officer. The learned Counsel further says that once those remarks remained intact, even after the reconsideration of the representation sent by the second respondent, there was no question of there being any promotion by way of a right. The learned Counsel urged that the promotion could not be claimed by way of a right, as the promotion could be given only on the basis of the assessment made by the Departmental Promotion Committee, and the Departmental Promotion Committee had clearly found the second respondent to be unfit for promotion

upto the year 1994 and found her to be fit for promotion only in the year 1997, when the promotion was actually granted to her. On this basis, the learned Counsel suggests that there was no point in issuing the direction by the Tribunal as it did.

4. As against this, Mr.Giridhar, the learned Counsel for the second respondent, points out that once the second respondent was rated as a good Officer, there would be no question of her promotion being rejected. Mr.Giridhar very fairly agreed that the Tribunal could not have awarded the promotion or could not have issued a positive direction in favour of the second respondent to promote her with effect from 1 994. However, the learned Counsel points out that in the wake of the remarks and in the wake of the earlier observations of the Tribunal in the first round of litigation, there was no question of the second respondent being deprived of the promotion with effect from 1994.

5. On this basis, we will have to consider as to whether the Tribunal was justified. There could be no dispute that this was not a selection-cum-seniority or selection by merit post. This post would be covered by non-selection method, for which there is a guideline via Clause 7 of guidelines and rules. It suggests that in a non-selection post, the only basis for promotion would be the assessment made by the Departmental Promotion Committee, wherein the Departmental Promotion Committee would classify the concerned persons into two categories, which would be 'fit' and 'not yet fit', for the purposes of promotion. It is, then, seen from the said Clause 7 that the general guidelines provided in paragraph 6.1.4. are also to be taken into account.

6. Accordingly, when we examine the records, we find that at no point of time, even the Tribunal wiped out or erased the adverse remarks made against the second respondent. It is true that the Tribunal had noted that the second respondent was branded as a good Officer. However, it cannot be ignored that even then, the Tribunal did not hold that that branding as a good Officer wiped out the earlier adverse remarks, which were communicated to the second respondent for the two years. Mr.Giridhar also could not say and urge that the earlier adverse remarks were in any way erased from the record.

7. Now, once this position is patent that the earlier adverse confidential remarks remained on the record, then, the department was perfectly justified in relying upon them and holding that the concerned employee, the second respondent herein, was unfit for being promoted, and it has actually come out with that stand in its counter. We were taken through the counter by Mr.Veluswami. In the counter, it is very clearly suggested that owing to the two adverse remarks, the second respondent was considered not to be fit for promotion in the year 19 94, and she was actually found to be fit for promotion only with effect from 1997, and accordingly, she was also promoted. Once this position is clear, it is difficult to uphold the order passed by the Tribunal now. The Tribunal has misconstrued its earlier order. The Tribunal seems to be under the impression that in the earlier order, the effect of the adverse confidential remarks has been completely wiped out or erased from the record, as the case may be. The Tribunal probably has found fault with the petitioner for not properly understanding the earlier order of the Tribunal. We do not think so. The order has not only been properly understood, but has been properly acted upon also, whereby the concerned authority has considered the representation sent and rejected the same by

giving adequate reasons. We have seen that order also, and we are quite satisfied with the same.

8. The observation of the Tribunal "The respondent appears to be not able to understand the point that has been given by this Tribunal with regard to the so called adverse remarks." is not justified, because in spite of the noting that the second respondent was branded as the good Officer, the Tribunal in the first order was desisted from allowing the application, and merely permitted the second respondent to make a fresh representation. Therefore, there was no question of the petitioner not properly reading the earlier order of the Tribunal. We are also not agreeable with the further observations of the Tribunal that the adverse remarks have to be construed in such a way that it should not affect the future career of the government servant. That remark is really not called for. In fact, the adverse remarks are meant only for assessing the Officer, and the whole career of the concerned government employee depends upon the confidential remarks. This is apart from the fact that the Tribunal has not chosen to go into the language of Clause 7, which controls the whole procedure to offer the promotions in this department. Merely because the second respondent was termed as a good Officer, by itself will not wipe out the adverse remarks, which have been made against her and which were considered, reconsidered and re-reconsidered. We do not think that there has been any misunderstanding on the part of the petitioner in understanding the earlier order of the Tribunal, and consequently, we are of the clear opinion that the writ petition deserves to be allowed. It is allowed. The order of the Tribunal is set aside. The O.A. is directed to be dismissed. However, in the circumstances, there will be no order as to the costs. Consequently, connected WMP is closed.

Index: yes
Internet: yes

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nsv/